

AUG 20 1964

*See also
Vol. 3240*

No. 18,569 ✓

IN THE
United States Court of Appeals
For the Ninth Circuit

JOHN D. FORBES and ROSALIND L. FORBES,
Appellants,

vs.

A. G. MADDOX, Commissioner of Internal
Revenue and Taxation, Government of
Guam,
Appellee.

On Appeal from the Order of the District Court of Guam

MEMORANDUM FOR THE UNITED STATES
AS AMICUS CURIAE

LOUIS F. OBERDORFER,
Assistant Attorney General.

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FILED

AUG 13 1964

FRANK H. SCHMID, CLERK



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No. 18,569

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On Appeal from the Order of the District Court of Guam

**MEMORANDUM FOR THE UNITED STATES
AS AMICUS CURIAE**

This memorandum is filed in response to the order of this Court, dated May 7, 1964, inviting the United States to file a brief expressing its views on the issues involved in this matter.¹ Upon receipt of the order and in view of the interest of the Departments of the Treasury and the Interior in the issues involved, letters were written to those Departments inviting their

¹The opinion of the District Court is reported at 212 F. Supp. 662.

comments. Their replies are set forth in Appendix B, *infra*.

1. In 1958, the Guam legislature enacted Section 19700, II Government Code of Guam (1961) (Appendix A, *infra*), which provides that "the District Court of Guam shall * * * have the same jurisdiction with regard to the said [Guam Territorial] Income Tax as the Tax Court of the United States has with respect to the United States income tax." Section 19700 further provides that a taxpayer may file a petition with the District Court for a redetermination of a deficiency within 90 days (or 150 days) after the notice of deficiency is mailed. This provision became effective on March 14, 1958.

A. Article IV, Section 3, of the Constitution of the United States gives Congress authority "to * * * make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Accordingly, Congress has prescribed organic acts for the territories which take the place of a constitution as the fundamental law of the territory involved. *National Bank v. County of Yankton*, 101 U. S. 129, 133.

Guam is an unincorporated territory of the United States and the basic charter for its government is the Organic Act of Guam, c. 512, 64 Stat. 384, Section 3 (48 U.S.C. 1958 ed., Sec. 1421a). The legislative power of Guam is vested in its legislature (Section 10, Organic Act of Guam (Appendix A, *infra*)), and it extends "to all subjects of legislation of local application not inconsistent with the provisions of this

Act [the Organic Act of Guam] and the laws of the United States applicable to Guam" (Section 11, Organic Act of Guam (Appendix A, *infra*)).

In *Granville-Smith v. Granville-Smith*, 349 U. S. 1, 9-10, a case involving the power of another unincorporated territory, the Virgin Islands, to enact divorce laws, the Supreme Court noted that two considerations were involved in giving content to the power of the territorial legislature to pass legislation having "local application": (1) that the subjects of legislation have relevant ties, within the territory, to laws growing out of the needs of the territory and government relations within it; and (2) that the power could not exceed the scope of all rightful subjects of legislation.

B. The administration and collection of the Guam Territorial income tax is a proper subject of legislation of "local application" within the meaning of Section 11 of the Organic Act. At the time Section 19700 was enacted to give the District Court jurisdiction to entertain petitions to review deficiencies asserted by the Commissioner, Section 31 of the Organic Act of Guam (Appendix A, *infra*) provided that "The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam." In effect, this provision adopted the revenue laws of the United States, such as the Internal Revenue Code of 1954, and used them to impose a local income tax which was enforced by the Government of Guam. *Laguana v. Ansell*, 102 F. Supp. 919 (Guam), affirmed

per curiam, 212 F. 2d 207 (C. A. 9th), certiorari denied, 348 U. S. 830; *Wilson v. Kennedy*, 232 F. 2d 153 (C. A. 9th); *Jennings v. United States*, 168 F. Supp. 781 (Ct. Cl.).² Accordingly, an enactment of the Guam legislature which grants jurisdiction to the District Court to review deficiencies asserted by the Commissioner relates to the internal needs and laws of Guam.

With respect to the second consideration, i.e., that the subject of legislation must be a rightful subject, there were no provisions of the Organic Act or the laws of the United States applicable to Guam with which Section 19700 was inconsistent at the time it became effective on March 14, 1958. Section 22(a) of the Organic Act of Guam (Appendix A, *infra*) provided that the judicial authority of Guam was vested in the District Court and in such other courts as were established by the legislature. Section 22(a) further provided that the District Court had the jurisdiction of a District Court of the United States in all causes arising under the laws of the United States,³

²However, a Guam taxpayer may not utilize the Tax Court of the United States because that body has jurisdiction only to consider petitions for redetermination of notices of deficiencies in tax sent by the Secretary of the Treasury, or his delegate. Sections 6212(a), 6213(a), and 7442, Internal Revenue Code of 1954 (26 U.S.C. 1958 ed., Secs. 6212, 6213, and 7442); *Jones v. Commissioner*, Tax Court Docket No. 71931, dismissed May 29, 1958 (order dismissing petition relating to Guam Territorial income tax for want of jurisdiction); *Dudley v. Commissioner*, 258 F. 2d 182 (C. A. 3d) (affirming dismissal of petition for redetermination of Virgin Islands income tax).

³Section 22(a) was amended after the enactment of Section 19700 by the Act of June 4, 1958, P. L. 85-444, 72 Stat. 178, Section 1, to give the District Court jurisdiction over all federal causes without regard to the amount in controversy. This amendment has no significance for the purposes of this case.

and "original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it * * *." There was no inconsistency between the District Court's jurisdiction to hear local causes and the District Court's jurisdiction under Section 19700 to review deficiencies in Guam Territorial income tax determined by the Commissioner. In essence, Section 19700 provides a remedy or cause of action against the Commissioner.

C. The Third Circuit has indicated approval of a similar statute of the Virgin Islands which gave the District Court of the Virgin Islands jurisdiction to review proposed deficiencies in Virgin Islands income tax. *Dudley v. Commissioner*, 258 F. 2d 182, 188. Section 8 of the Revised Organic Act of the Virgin Islands, c. 558, 68 Stat. 497 (48 U.S.C. 1958 ed., Sec. 1574) states that the legislative power of the Virgin Islands extends to "all subjects of local application".⁴ In 1957, the legislature of the Virgin Islands provided for the review by the District Court of the Virgin Islands of deficiencies in Virgin Islands income tax. 5 Virgin Islands Code, Secs. 943 and 944. The provision governing the jurisdiction of the District Court, Section 22 of the Revised Organic Act (48 U.S.C. 1958 ed., Sec. 1612), is identical in substance with the provision governing the jurisdiction of the District Court of Guam, Section 22(a) of the Organic Act of Guam. Similarly, Section 1 of the Act of July 12,

⁴The words "all subjects of local application" were amended to read "all rightful subjects of legislation" by Section 2 of the Act of August 28, 1958, P. L. 85-851, 72 Stat. 1094.

1921, c. 44, 42 Stat. 122 (48 U.S.C. 1958 ed., Sec. 1397), provides that the income tax laws in force in the United States are in force in the Virgin Islands and it imposes a territorial income tax.

2. In 1958, by Section 1 of the Act of August 20, 1958, P. L. 85-688, 72 Stat. 681, Congress amended Section 31 of the Organic Act of Guam (Appendix A, *infra*), the provision dealing with income taxes, by adding several detailed provisions to that section. These amendments do not affect the validity of Section 19700.

A. The local character of the Guam Territorial income tax was further made certain. Subsections (a) and (b) of Section 31 provide that the income tax laws in force in the United States are in force in Guam and are deemed to impose a separate territorial income tax payable to the Government of Guam. The administration and enforcement of the tax is to be performed by the Governor (Section 31(c)); he is authorized to issue needful rules and regulations for the enforcement of the tax (Section 31(d)(2)). Section 31(d)(1) specifies that the income tax laws in force in Guam include, where not manifestly inapplicable or incompatible with the intent of Section 31, all of the provisions of Subtitle F of the Internal Revenue Code of 1954. The subtitle referred to contains the several provisions which deal with the Tax Court of the United States and its review of deficiencies in United States income tax determined by the Secretary of the Treasury, or his delegate. Sections 6212, 6213, 7441 and 7442, Internal Revenue

Code of 1954 (26 U.S.C. 1958 ed., Secs. 6212, 6213, 7441, 7442). This Court has ruled that the Commissioner must wait 90 days before assessing the tax after giving notice pursuant to Sections 6212 and 6213 of the 1954 Code. *Bromerg v. Ingling*, 300 F.2d 859; *Jones v. Ingling*, 303 F. 2d 438. Since a Guam taxpayer does not have access to the Tax Court of the United States for review of deficiencies in Guam Territorial income tax asserted by the Commissioner (see fn. 1, *supra*), the extension of such review to them by Section 19700 would seem to be entirely compatible with the provisions of the Internal Revenue Code of 1954.

B. Section 31, as amended, also details the jurisdiction of the District Court in income tax matters. Section 31(h)(1) provides that the District Court shall have "exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, * * * with respect to the Guam Territorial income tax." Section 31(h)(5) provides that such jurisdiction shall not be subject to transfer to any other court, notwithstanding the provisions of Section 22(a). Since Section 22(a) authorized the legislature of Guam to transfer jurisdiction over local causes to such other courts as it established, it is clear that the purpose of subsections (h)(1) and (h)(5) of Section 31 is to restrict that power to the end that jurisdiction over income tax matters remains in the District Court. Section 19700 is consistent with this purpose.

Another provision of Section 31, as amended, provides that suits for recovery of Guam Territorial in-

come taxes alleged to have been erroneously collected can be maintained against the Government of Guam. Section 31(h)(2), Organic Act of Guam. The purpose of this provision is to allow the aggrieved taxpayer to bring his suit against the Government of Guam. S. Rep. No. 2176, 85th Cong., 2d Sess., p. 1 (1958-3 Cum. Bull. 352). Compare Section 7422, Internal Revenue Code of 1954 (26 U.S.C. 1958 ed., Sec. 7422). Previously, the taxpayer had to sue the official charged with the duty of collecting such taxes. *Crain v. Government of Guam*, 195 F. 2d 414 (C. A. 9th).

C. In its opinion, the District Court relied (R. 20-21) upon certain correspondence between the Departments of the Treasury and the Interior concerning a proposal to grant to the District Court jurisdiction to review deficiencies in Guam Territorial income tax in the legislation (H. R. 12569, 85th Cong., 2d Sess.) which was introduced into Congress and which was ultimately enacted to add the amendments to Section 31 which have been just discussed. However, the legislation as forwarded to Congress made no reference to preassessment review jurisdiction. H. Rep. No. 2273, 85th Cong., 2d Sess., pp. 4-5, 9-11 (1958-3 Cum. Bull. 353, 355-356, 358-360). There is, therefore, no indication that Congress was aware of the proposal to confer such jurisdiction upon the District Court. Consequently, the failure of Congress to include such a provision in the Act of August 20, 1958, P. L. 85-688, 72 Stat. 681, Section 1, cannot be said to indicate an intent on the part of Congress to limit the jurisdiction of the District Court to refund

suits and, by implication, to annul Section 19700. Repeal by implication of an earlier law by a later one is not favored; there must be a positive repugnancy between the old law and the new. *Wood v. United States*, 16 Pet. 342, 362-363; *Wright v. Ynchausti & Co.*, 272 U. S. 640, 650-651.

Moreover, the subsequent legislative history of Section 31 tends to show that there is no inconsistency between it and section 19700. The Guam act was reported to Congress on September 18, 1959 (Letter of Lewis S. Flagg, III, Associate Solicitor, Department of the Interior, to Louis F. Oberdorfer, Assistant Attorney General, dated May 25, 1964 (Appendix B, *infra*)), and Congress has taken no steps to annul it. Finally, although the Department of the Treasury was opposed in principle to legislation giving deficiency review jurisdiction to the District Court, it views Section 19700 as being within the legislative power of Guam. Letter of G. d'Andelot Belin, General Counsel, Department of the Treasury, to Louis F. Oberdorfer, Assistant Attorney General, dated June 25, 1964 (Appendix B, *infra*).

D. The sequence in which Section 31 was amended and the enactment of Section 19700 was reported to Congress is important for another reason. All laws enacted by the Guam legislature must be reported to Congress, and it has reserved the power to annul them. If a law is not annulled within one year of the date of receipt of the law by Congress, it is deemed to have been approved. Section 19, Organic Act of Guam (Appendix A, *infra*). Section 19700 has not been expressly annulled.

Accordingly, we are of the view that the District Court had jurisdiction to entertain the petition of the taxpayers under Sections 22(a) and 31(h)(1) of the Organic Act of Guam and Section 19700 of the Government Code of Guam.

Respectfully submitted,

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Washington, D. C. 20530.

August, 1964.

(Appendices A and B Follow)

Appendices.



Appendix A

Organic Act of Guam, c. 512, 64 Stat. 384:

Sec. 10. The legislative power of Guam, except as otherwise provided in this Act, shall be vested in a legislature which shall consist of a single house of not to exceed twenty-one members to be elected at large. * * *

(48 U.S.C. 1958 ed., Sec. 1423.)

Sec. 11. The legislative power of Guam shall extend to all subjects of legislation of local application not inconsistent with the provisions of this Act and the laws of the United States applicable to Guam. * * *

(48 U.S.C. 1958 ed., Sec. 1423a.)

Sec. 19. * * *. All laws enacted by the legislature shall be reported by the Governor to the head of the department or agency designated by the President under section 3 of this Act, and by him to the Congress of the United States, which reserves the power and authority to annul the same. If any such law is not annulled by the Congress of the United States within one year of the date of its receipt by that body, it shall be deemed to have been approved.

(48 U.S.C. 1958 ed., Sec. 1423i.)

Sec. 22. (a) There is hereby created a court of record to be designated the "District Court of Guam", and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam.

The District Court of Guam shall have, in all causes arising under the laws of the United States, the jurisdiction of a district court of the United States as such court is defined in section 451 of title 28, United States Code, and shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. * * *

* * * * *

(48 U.S.C. 1952 ed., Sec. 1424.)

Sec. 31. The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam.

(48 U.S.C. 1952 ed., Sec. 1421i.)

Sec. 31 [as amended by Sec. 1, Act of August 20, 1958, P. L. 85-688, 72 Stat. 681].

(a) The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam.

(b) The income-tax laws in force in Guam pursuant to subsection (a) of this section shall be deemed to impose a separate Territorial income tax, payable to the government of Guam, which tax is designated the "Guam Territorial income tax".

(c) The administration and enforcement of the Guam Territorial income tax shall be performed by or under the supervision of the Governor. Any function needful to the administra-

tion and enforcement of the income-tax laws in force in Guam pursuant to subsection (a) of this section shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function.

(d) (1) The income-tax laws in force in Guam pursuant to subsection (a) of this section include but are not limited to the following provisions of the Internal Revenue Code of 1954, where not manifestly inapplicable or incompatible with the intent of this section: Subtitle A (not including chapter 2 and section 931); chapters 24 and 25 of subtitle C, with reference to the collection of income tax at source on wages; and all provisions of subtitle F which apply to the income tax, including provisions as to crimes, other offenses, and forfeitures contained in chapter 75. For the period after 1950 and prior to the effective date of the repeal of any provision of the Internal Revenue Code of 1939 which corresponds to one or more of those provisions of the Internal Revenue Code of 1954 which are included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, such income-tax laws include but are not limited to such provisions of the Internal Revenue Code of 1939.

(2) The Governor or his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax. Needful rules and regulations for

enforcement of the Guam Territorial income tax shall be prescribed by the Governor. The Governor or his delegate shall have authority to issue, from time to time, in whole or in part, the text of the income-tax laws in force in Guam pursuant to subsection (a) of this section.

(e) In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, except where it is manifestly otherwise required, the applicable provisions of the Internal Revenue Codes of 1954 and 1939, shall be read so as to substitute "Guam" for "United States", "Governor or his delegate" for "Secretary or his delegate", "Governor or his delegate" for "Commissioner of Internal Revenue" and "Collector of Internal Revenue", "District Court of Guam" for "district court" and with other changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effect the intent of this section.

(f) Any act or failure to act with respect to the Guam Territorial income tax which constitutes a criminal offense under Chapter 75 of subtitle F of the Internal Revenue Code of 1954, or the corresponding provisions of the Internal Revenue Code of 1939, as included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, shall be an offense against the government of Guam and may be prosecuted in the name of the government of Guam by the appropriate officers thereof.

(g) The government of Guam shall have a lien with respect to the Guam Territorial income tax in the same manner and with the same effect,

and subject to the same conditions, as the United States has a lien with respect to the United States income tax. Such lien in respect of the Guam Territorial income tax shall be enforceable in the name of and by the government of Guam. Where filing of a notice of lien is prescribed by the income-tax laws in force in Guam pursuant to subsection (a) of this section, such notice shall be filed in the Office of the Clerk of the District Court of Guam.

(h) (1) Notwithstanding any provision of section 22 of this Act or any other provision of law to the contrary, the District Court of Guam shall have exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial income tax.

(2) Suits for the recovery of any Guam Territorial income tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, under the income-tax laws in force in Guam, pursuant to subsection (a) of this section, may, regardless of the amount of claim, be maintained against the government of Guam subject to the same statutory requirements as are applicable to suits for the recovery of such amounts maintained against the United States in the United States district courts with respect to the United States income tax. When any judgment against the government of Guam under this paragraph has become final, the Governor shall order the pay-

ment of such judgments out of any unencumbered funds in the treasury of Guam.

(3) Execution shall not issue against the Governor or any officer or employee of the government of Guam on a final judgment in any proceeding against him for any acts or for the recovery of money exacted by or paid to him and subsequently paid into the treasury of Guam, in performing his official duties under the income-tax laws in force in Guam pursuant to subsection (a) of this section, if the court certifies that—

(A) probable cause existed; or

(B) such officer or employee acted under the directions of the Governor or his delegate.

When such certificate has been issued, the Governor shall order the payment of such judgment out of any unencumbered funds in the treasury of Guam.

(4) A civil action for the collection of the Guam Territorial income tax, together with fines, penalties, and forfeitures, or for the recovery of any erroneous refund of such tax, may be brought in the name of and by the government of Guam in the District Court of Guam or in any district court of the United States or in any court having the jurisdiction of a district court of the United States.

(5) The jurisdiction conferred upon the District Court of Guam by this subsection shall not be subject to transfer to any other court by the legislature, notwithstanding section 22(a) of this Act.

(48 U.S.C. 1958 ed., Sec. 1421i.)

II Government Code of Guam (1961):

§ 19700. *District Court Jurisdiction.* In addition to such other jurisdiction as the District Court of Guam has with respect to the Income Tax provided by Section 31 of the Organic Act of Guam and pursuant to the United States Internal Revenue Code of 1939, as amended, and the United States Internal Revenue Code of 1954, as amended, and any future amendments thereto, the District Court of Guam shall also have the same jurisdiction with regard to the said Income Tax as the Tax Court of the United States has with respect to the United States income tax. The taxpayer may file a petition with the District Court of Guam for a redetermination of a deficiency within ninety (90) days after the notice of deficiency is mailed, or one hundred and fifty (150) days if the notice is mailed to a person outside the territory of Guam, (Not counting Saturday, Sunday, or a legal holiday in Guam as the last day). The District Court of Guam shall implement this Chapter, as may be necessary, by rules and procedure.

Appendix B

United States
Department of the Interior
Office of the Solicitor
Washington 25, D.C.

In Reply Refer To
5-11112
May 25, 1964

Hon. Louis F. Oberdorfer
Assistant Attorney General
Tax Division
Department of Justice
Washington, D. C. 20530
Attention: Mr. I. Henry Kutz

Dear Mr. Oberdorfer:

This replies to your letter of May 15, 1964, to Mr. Frank J. Barry, Solicitor of this Department, with regard to proceedings styled *John D. Forbes, et al. v. A. G. Maddox, Commissioner of Internal Revenue and Taxation, Government of Guam* (C. A. 9th-No. 18,569). We understand that you desire our comments on the legal issues involved in the case, since you have been requested by the Ninth Circuit to file an amicus brief.

We have reviewed the decision of Judge Shriver of the District Court of Guam, the briefs filed by both the appellants and appellee before the United States Court of Appeals for the Ninth Circuit, pertinent correspondence in the files of the Office of Territories,

the official legislative history of Public Law 85-688 (72 Stat. 681), which amended Section 31 of the Organic Act of Guam and this Department's own legislative file on Public Law 85-688. It is our conclusion that Judge Shriver's decision is in error. We concur in and adopt the views expressed and the arguments advanced in the appeal briefs of both parties, with one minor caveat indicated below.

It is indeed unusual and striking in a jurisdictional question of this nature to find both parties to the case in absolute agreement that the lower court was in error in denying its own jurisdiction. We share their view that the source material used by the District Court in reaching this decision was, to say the least, unusual. The comment in the appellants' brief on the bottom of page 8 and the top of page 9 addresses itself to this unusual circumstance, but fails to note a significant fact. Congress did not in fact dispose of the objection of the Department of the Treasury by enacting the statute.

Rather, it was never aware of the objection. The interdepartmental correspondence between Interior and Treasury with regard to a possible provision to specifically confirm the preassessment review jurisdiction of the Guam District Court remained entirely within the Executive Branch. Congress was not made aware that such a suggestion had been made since the bill which was finally cleared by the Bureau of the Budget and submitted to Congress did not contain the controversial provision. It cannot be said, as is implicit in Judge Shriver's decision, that the failure of Con-

gress to include such a provision in Public Law 85-688 resulted from the Treasury Department's opposition. Therefore one cannot imply any intent to exclude such jurisdiction.

On page 4 of the appellee's brief it is stated that there is a presumption that Congress was informed of the enactment of Section 19700, Chapter 9, Title XX, Government Code of Guam, the Act whereby the Guam Legislature specifically conferred preassessment review jurisdiction on the District Court of Guam. We can confirm that this Department, by identical letters of September 18, 1959, to the President of the Senate and Speaker of the House, signed by Administrative Assistant Secretary Otis Beasley, did in fact inform Congress of the enactment of this legislation.

Finally, should the issue again be raised, we are in agreement with the view expressed in a memorandum by Mr. Ben-Horin of your office to Mr. Kutz of your office dated November 4, 1963, that the Tax Court of the United States possesses no jurisdiction with respect to the Guam Territorial Income Tax.

In view of the above, it is the recommendation of this Department that the amicus brief to be filed by the Department of Justice support the view that the District Court of Guam does have preassessment review jurisdiction.

Sincerely yours,
/s/ Lewis S. Flagg, III
Lewis S. Flagg, III
Associate Solicitor
Territories, Wildlife and Parks

General Counsel
Treasury Department
Washington

CC:I:I-1359

Jun 25 1964

3:EMF

Honorable Louis F. Oberdorfer
Assistant Attorney General
Tax Division
Department of Justice
Washington, D. C. 20530
Attention: Mr. I. Henry Kutz

In re: John D. Forbes, et al. v. A. G. Maddox,
Commissioner of Internal Revenue and
Taxation, Government of Guam
(C. A. 9th-No. 18,569)

Dear Mr. Oberdorfer:

Your letter of May 15, 1964, requested our views on the issues in the above-styled case, since you are preparing a brief as *amicus* to be filed with the Court of Appeals.

This appeal arises from a petition filed by appellants in the District Court of Guam to redetermine proposed deficiencies in Guam Territorial income tax asserted by the Commissioner of Internal Revenue and Taxation of the Government of Guam for the taxable years 1959 and 1960. The District Court, in an opinion by Judge Shriver (212 F. Supp. 662 (1963)), dismissed the petition on the ground that the court had no jurisdiction to entertain it, but only to decide a suit for refund. The court reviewed the his-

tory of Pub. L. 85-688, section 1, 72 Stat. 681, 48 U.S.C. 1421i, effective August 20, 1958, which amended section 31, Organic Act of Guam, August 1, 1950, c. 512, 64 Stat. 384, including the correspondence between the Interior and Treasury Departments wherein this Department objected to a proposal that Congress confer preassessment review jurisdiction on the District Court of Guam. Judge Shriver concluded that Pub. L. 85-688 limited his jurisdiction "to that which may properly be exercised by a United State district court in connection with United States income taxes." The taxpayers have appealed and both they and the Commissioner contend that the District Court had jurisdiction to entertain the petition, in part because of the passage by the Guam Legislature of Section 19700, Chapter 9, Title XX, Government Code of Guam, effective March 14, 1958, which purported to grant to the District Court of Guam the same jurisdiction with regard to the Guam Territorial income tax as the Tax Court of the United States exercises with respect to the United States income tax.

You have asked our opinion whether Guam Code section 19700 lawfully conferred jurisdiction on the District Court of Guam to entertain petitions for redetermination of proposed deficiencies in Guam Territorial income tax, and, if so, what effect, if any, the subsequent enactment of section 1421i(h), 48 U.S.C., had on section 19700.

It is our conclusion that section 19700 validly granted jurisdiction to the District Court of Guam for preassessment review of proposed deficiencies in

Guam Territorial income tax, and that section 1421i (h) did not repeal it.

The history of the draft bill which became Pub. L. 85-688 shows that Congress, so far as we know, was not aware of the proposal to confer preassessment review jurisdiction on the District Court of Guam or of Treasury's objection to it, since the correspondence mentioned by Judge Shriver remained within the Executive Branch. Therefore, we submit, the failure of Congress to include such a provision in Pub. L. 85-688 cannot be said to have resulted from this Department's objection to such jurisdiction, or imply any intent to exclude it.

We admit that Pub. L. 85-688 may be read as limiting the jurisdiction of the District Court of Guam to the sole remedy of refund suits by Guam taxpayers, and in giving to such taxpayers certain remedies equivalent to those available under United States income tax laws, this statute could be construed as an intentional omission by Congress of the right to petition for prepayment review. Since, however, there was no such proposal in H.R. 12569 we should not assume that Congress evinced any intention not to allow the Guam Legislature to confer such jurisdiction, if it so chose.

Therefore, in view of section 1424 of the Organic Act of Guam authorizing the Guam Legislature to confer on the District Court original jurisdiction in local matters not conferred on other courts and in view of section 1421i(h)(1) of the same Organic Act conferring on the District Court sole original juris-

diction in Guam income tax cases, it is our opinion that Guam Code Section 19700 represents a valid enactment by the Guam Legislature.

If we can further assist you in this case, please do not hesitate to call us.

Sincerely yours,

/s/ G. d'Andelot Belin

G. d'Andelot Belin

General Counsel

Enclosure